STATE PETROLEUM BOARD TO REVIEW CLAIMS
BOARD MEETING MINUTES
December 12, 2002

Note: This meeting was recorded on a Verbatim CD using a computer program called FTS Player Plus. A copy of the CD from this Board meeting can be obtained by contacting Karen Fleming, NDEP, 333 W. Nye Lane, Room 206, Carson City, Nevada 89706-0851 or by calling (775) 687-9367.

CALL TO ORDER

Mr. John Haycock, Chairman, called the meeting to order at 10:00 a.m. The meeting was videoconferenced and was held at the following locations:

Las Vegas: The Legislative Counsel Bureau Chambers in the Grant Sawyer Building (Room 4401), 555 East Washington Avenue.
Carson City: The Legislative Counsel Bureau Chambers in the State Legislative Building (Room 2135), 401 South Carson Street.
Elko: Great Basin College (Room 137), 1500 College Parkway.

BOARD MEMBERS PRESENT

John Haycock, Chairman, Joanne Blystone, Linda Bowman, Mike Miller, Allen Biaggi, Mike Dzyak, Karen Winchell.

BOARD MEMBERS ABSENT

None

STAFF PRESENT

Gil Cerruti, Hayden Bridwell, Doug Zimmerman, Jennifer Carr, Bennett Kottler, Karen Fleming, Todd Croft, Sara Piper, and Susan Gray (Legal Representative to the Board).

I. APPROVAL OF THE AGENDA

Mr. John Haycock began the meeting by calling upon the Board to approve the agenda. Mr. Gil Cerruti informed the Chairman there were requests to speak at the meeting from the following: Mr. Dan Reaser and Steve Richie requested to speak regarding Case No. 99-219 - Lake Tahoe Oil and during the Executive Summary; Mr. Dino DiCianno from the Department of Taxation would speak regarding delinquencies; Mr. Peter Krueger requested to speak during the Public Forum. The agenda was unanimously approved.

II. MINUTES

Mr. Haycock requested the Board's approval of the minutes from the September 18, 2002 Board meeting. The minutes were unanimously approved. Mr. Allen Biaggi mentioned that in Item #2 there was an equal (=) sign where there should be an apostrophe (‘). This is a minor typo, to be noted and corrected by the Board Secretary. The minutes were unanimously approved.

III. STATUS OF THE FUND STATEMENT

Mr. Cerruti introduced NDEP staff in attendance at the meeting. Mr. Cerruti presented the Status of the Fund Statement (See Attachment A). Forwarded from the previous fiscal year, (FY2001) is $9.2 million. The tank fee has not been collected for this fiscal year. The current expenditures total around $1.8 million, of which $1.7 million is for reimbursement of claims. The current liabilities total around $750,000. The total expenditure of $2.5 million leave the Fund with a balance of $6.7 million. If the Board approves the recommendation of $1.6 million from this meeting it will leave a Fund balance of about $5 million. The amount in the Fund will soon be below the statutory level. By the March 2003 Board meeting, NDEP will request the Department of Motor Vehicles (DMV) to start collecting the tank fee for the next fiscal year.

IV. DETERMINATION OF FUND COVERAGE

IV.A. Resolution to Reduce Petroleum Fund Coverage to the Winner's Corner #14, 2191 Pyramid Way, Sparks, Nevada. Petroleum Fund Case #99-252 - Resolution No. 2002-04:

The motion to approve this resolution was carried unanimously.

Mr. Hayden Bridwell presented this resolution to the Board. Mr. Bridwell stated that the Winner's Corner facility is owned by Berry-Hinckley Industries and throughout his presentation he would be referring to the company as "BHI". The UST system at the Winner's Corner consists of three single wall steel constructed motor fuel UST's which were installed in 1976. In February of 1998 the UST system was fitted with an impressed current cathodic protection system to conform to corrosion protection requirements pursuant to 40CFR 280.21. As of December 22, 1998 there were federal requirements for upgrading UST systems. BHI was in compliance with meeting the deadlines. An impressed current system is satisfactory to meeting the corrosion protection requirements on this type of UST system. Mr. Bridwell informed the Board as to how the impressed current system functioned. Mr. Bridwell stated that the impressed current system has to be operated and maintained properly to provide continuous corrosion protection to the UST system in order to stay in compliance pursuant to 40 CFR 280.31A. Federal regulations require that the rectifier unit (which provides the current) be inspected every 60 days to confirm proper operation. On August 23, 2001, during a normal scheduled 60-day inspection, BHI noticed the rectifier system was not providing a current. Therefore, as of that date, and potentially up to 59 days before that date, the UST system was not being provided with corrosion protection. Federal regulations require that a person who has been certified by the National Association of Corrosion Engineers (NACE) perform any installation or repair of a corrosion protection system. Upon noticing the rectifier was not operating properly, BHI immediately contacted a NACE certified contractor. During the following nine months, the UST system was inspected by four NACE certified contractors and at no time were they able to make repairs. During the nine months, BHI elected to continue to operate the system and dispense fuel even though there was no corrosion protection being provided. On May 29, 2002, a NACE certified contractor installed a brand new impressed current system. The UST system also had been lined. However, there was a nine-month period that the UST system was being operated without the corrosion protection system functioning. On March 29, 2002, before the system came back into compliance, a gasoline release was discovered to have emanated from one of the gasoline USTs resulting from corrosion holes. The leaking UST was emptied and taken out of service. The other two USTs were kept in operation. On April 11, 2002 the Washoe County District Health Department became aware of the situation and had forwarded a notice of noncompliance regarding the non-operation of the impressed current system. At the time the release was discovered the UST system was enrolled in the Petroleum Fund and on September 11, 2002, NDEP received a fund coverage application for the release. When the release was discovered the UST system was out of compliance with 40 CFR 280.31A. Resolution 94-023, adopted by the Board on November 30, 1994, requires Petroleum Fund staff to recommend a ten percent reduction in reimbursement if the leaking UST system was out of compliance with general operating requirements. Mr. Bridwell requested that this claim be granted petroleum fund coverage with a ten percent reduction. Mr. Haycock questioned whether or not BHI was opposed to the ten percent reduction. Mr. Bridwell stated that representatives from BHI were available to speak if needed. Mr. Haycock stated that would not be necessary unless BHI wanted to oppose the resolution. Mr. Bridwell stated that BHI had no exception to the proposed resolution. The resolution was unanimously approved.

ADOPTION OF CONSENT ITEMS - REVIEW OF CLEANUP CLAIMS

Ms. Blystone motioned to approve cleanup claims under Agenda Item Number Five - Adoption of Consent Items. Ms. Blystone motioned for approval of Heating Oil Cases, numbers 1 through 7. The motion was carried unanimously. Ms. Blystone motioned to approve New Cases, Other Products, numbers 1 through 5. The motion was carried unanimously. Ms. Blystone motioned to approve Old Cases, Other Products numbers 1 through 102. Ms. Linda Bowman abstained from voting under Old Cases, Other Products on Item Number 8, 92-062 - Allied Petroleum (Elko), Item Number 20, 94-003 - Allied Petroleum (Reno), Item Number 29, 94-065 - Avis Rent-A-Car and Item Number 55, 98-046 Allstate Rent-A-Car. The motion to approve was carried. Mr. Mike Miller mentioned for the record that he has a business relationship with Equilon and Equiva but that it would not affect his vote. Mr. Haycock abstained from Item Number 71 – 99-066 and Item Number 77 - 99-090 both for Haycock Petroleum. Mr. Haycock also mentioned that for Item Number 87, Squeaky's Car Wash, he no longer has ownership in that company, therefore, it would not affect his vote in that case. The motion to approve was carried.

Non-Consent Item, 95-042, FBF Texaco (FBF):
Mr. Cerruti began by stating that this case was deferred at the September 18, 2002 Board Meeting where staff had made a recommendation for denial of reimbursement of monies which exceeded the statutory cap for corrective actions. Mr. Cerruti stated that on behalf of FBF Texaco, Mr. Greg Walsh, Attorney, presented the Board with a handout and appealed to the Board to make an interpretation different than that of NDEP staff. Because of the new information submitted at that time, Ms. Blystone suggested that staff look at the submitted material and prepare a response for the next meeting. Mr. Cerruti indicated to the Board members that staff's response, along with the handout from FBF Texaco, was included in this meeting's Board package and divided into seven sections. Mr. Cerruti discussed each section of the staff's response and Mr. Walsh's handout with the Board members. Mr. Cerruti referred to the November 26th letter from FBF's consultant where they pleaded to allocate 66% of the total expenditures to off-site costs. A total of $829,000 has been spent since the consultant took over the case. Mr. Cerruti mentioned that there is confusion as to the dollar amounts in this case. The submitted invoices from FBF's consultant amount to $1.3 million and NDEP's records reflect a little over $1 million. Mr. Cerruti mentioned to the Board that there is a $300,000 difference and then another $200,000 dollar difference. Staff's position is that the $16,000, which exceeded the corrective action cap limit, be denied. Mr. Cerruti stated that in Mr. Walsh's handout there is a copy of Resolution 94-018, which appears to be inaccurate. The resolution was excerpted from NDEP's webpage and was posted in error. The resolution was a draft and not the original resolution. Mr. Cerruti mentioned that action is being taken to get the correct current resolution posted on the website. Mr. Walsh referred to the Magic Wand case stating that the Magic Wand case pre-dates the adoption of Resolution 94-018. Mr. Cerruti stated that one of the reasons Resolution 94-018 was presented and adopted by the Board was to cover matters like the confusion that resulted from the situation surrounding the Magic Wand case. For FBF, the claim total requested to date is over $1 million and with the allowance from the last Board meeting, the Fund has paid $900,000 dollars. This is a ten percent co-payment case, which $100,000 of that equals the $1 million cap limit. The issue from the September 18, 2002 meeting is the recommended denial by staff of the $16,000 that exceeded the statutory cap limit. The recommendation for denial finds its basis in Resolution 94-018, part two, and in the statute as interpreted in this resolution. The claimant, FBF Texaco, is petitioning the Board to make another interpretation of Resolution 94-018, which differs from staff's interpretation. Mr. Cerruti stated that Resolution 94-018 adopted by the Board on February 9, 1995, states that for each tank system failure occurrence, there are two one million dollar Petroleum Fund allotments available. On page three of the resolution it states that the first reimbursement allotment, described by NRS 590.890, shall be recommended for reimbursement for corrective action measures performed ***without respect to the extent of plume migration*** from the underground storage tank system release. Mr. Cerruti stated that the first $1 million is to be reimbursed for corrective action measures taken on-site or off-site and that the second one-million dollar allotment is available specifically for third party damages once the first reimbursement allotment has been exhausted. The disputed amount, which is for $16,000, is for corrective action costs that exceeded the first one million dollar allotment. Mr. Cerruti indicated that this is a ten percent co-payment

case and the first reimbursement allotment of $1 million was already approved for reimbursement fully in its entirety by the Board as evidenced by the $900,000 total paid to date for this case. There is no remaining money from the first million-dollar allotment for this case since the cap has already been reached. Staff finds no reason in the statutes or the resolution to make the interpretation that any part of the second one million dollars be used for corrective action measures prior to exhausting the first one million dollars. In doing so, it could result in reimbursing more for overall corrective action leaving less available for third party liability. In this case, part of the first allotment would be reassigned to the second one million dollar allotment. This reassignment would translate into effectively removing and readjusting the one million dollar ceiling limit, which has already been reached for the first allotment. The second one million dollars of Fund coverage could then be used for reimbursement of corrective action measures prior to exhausting the first $1 million. Mr. Cerruti further stated that it is his duty to inform the Board that no action on this case should be taken at this time. Mr. Cerruti stated that at the September 18, 2002 Board meeting Ms. Susan Gray, Legal Representative to the Board, advised the Board that it would be necessary to amend the resolution before taking any action. Mr. Cerruti reminded the Board that a reinterpretation of Resolution 94-018 would establish a new precedent for all future cases involving off-site remediation. Therefore, staff recommends that the interpretation of Resolution 94-018 remain as is and that the denied amount of $16,457.88 for FBF Texaco, be separated where applicable into third party costs and these costs be resubmitted to the Fund as a third party claim which staff will then process. Mr. Cerruti stated that if the Board decided to reinterpret Resolution 94-018, staff would prepare an amended resolution for presentation at the next board meeting. Staff requested that the Board consider deferring this issue until the next meeting. Mr. Haycock asked Mr. Cerruti what action would be taken if the costs were re-allocated. Mr. Cerruti stated that would happen if the resolution were reinterpreted. The costs cannot be re-allocated according to the resolution. Ms. Susan Gray commented about the use of the word "re-interpretation" and stated that it is the wrong term to use. The resolution does mention staff recommendation and the statute provides that each case can be reviewed by the facts of the case. While this resolution mandates that staff make this recommendation, it does not prevent the Board from coming up with a different outcome by considering the facts of the case. Ms. Linda Bowman asked Mr. Cerruti if the off-site remediation was ongoing and if the contamination went beyond the property line. Mr. Cerruti answered yes and referred to the consultant's letter. Ms. Bowman questioned Mr. Cerruti about third party corrective action and wanted to know if that meant that the corrective action would be done by the third party? Mr. Cerruti explained that the third party is anyone other than the first party and the third party can incur damages, either personal or property. Then those damages are fixed by performing a corrective action for the third party. The first party has the legal obligation to pay for damages caused by their plume. The first party would be reimbursed for the third party damages once the first $1 million has been exhausted for corrective action.

Mr. Greg Walsh, Attorney, and Mr. Sean Fayeghi of FBF Texaco spoke to the Board. Mr. Walsh stated the real issue is that FBF has reached $1 million for cleaning up on-site and there is only money left to cleanup the off-site contamination. To date, $671,000 has been spent for off-site work and $345,000 has been spent for on-site work. Broadbent and Associates estimates it will cost $145,000 for off-site work and it would cost about $70,000 for on-site work in order to get this project closed. The issue is whether FBF would be compensated from the Fund for $70,000 in the future. Mr. Walsh discussed the memo written by Mr. Chuck Meredith, of the Deputy Attorney General's Office and former legal representative to the Petroleum Board, referring the Board to page five of that memo. Mr. Walsh stated that this memo was drafted over four years after Resolution 94-018, in July 1998. Mr. Walsh stated that Mr. Meredith's interpretation of the statute is consistent with the Magic Wand case. Mr. Walsh discussed the Magic Wand case and explained the stipulations of that case regarding the truck stop spill and the coffee shop spill. Mr. Walsh stated that there was
$1 million less deductible for the on-site cleanup of the "coffee shop plume" and there was $1 million less deductible for the on-site cleanup of the "truck stop plume". There were two spills that had reached the two-million dollar mark and it was decided to allocate on-site versus off-site since the cap on the spills had been

accumulated. There was an establishment of percentages (63% and 37%) agreed upon for on-site versus off-site in the Magic Wand Case. Mr. Walsh stated that the separation of the on-site versus off-site is supported by NRS 590.890, which provides that costs must be paid by the operator, 10% of the first $1 million for cleanup of each tank release and 10% of the second $1 million for third party damages or both amounts to the extent applicable. Mr. Walsh referred to the fifth exhibit in his package where there was a memo from Mr. Allen Biaggi dated March 22, 1995, which indicated there was a high potential for impacting municipal wells and to get the off-site work completed. Mr. Walsh stated that he did agree with Mr. Cerruti that a clarification of Resolution 94-018 should be done to make this issue less complicated in the future. Mr. Walsh commented that an owner should not be expected to clean the on-site area first while the plume could be escaping further off-site. Ms. Blystone asked Mr. Walsh to reiterate the continued costs and the time frame of the project. Mr. Walsh replied, referring to a letter from Broadbent, dated November 26, 2002, stating the off-site costs would be $145,000 and it would be $70,000 for on-site costs for future remediation, monitoring, closure monitoring and abandonment activities. Mr. Walsh stated the time frame would be about another two years for closure monitoring. Ms. Bowman asked Mr. Walsh if the deductibles should also be paid at that time. Mr. Walsh stated this should have been a deductible case instead of a co-pay case. The ten percent co-pay is still going to apply to the first $1 million or the second $1 million. Mr. Sean Fayeghi, owner of the FBF Texaco station, addressed the Board. Mr. Fayeghi stated that he contacted Mr. Keith Stewart in the beginning who told him that there would be a $10,000 dollar deductible and assured that there would be $1 million of coverage for on-site and $1 million for off-site. Six or seven months later, Mr. Fayeghi was notified that the paperwork was misplaced and was not filed in a timely manner. The rules changed requiring a ten percent co-pay. Mr. Fayeghi stated that he already paid the $10,000 and that he just wanted the project completed. The project has lasted for nine years. Mr. Fayeghi stated that he has been through some things in his life and two years ago he ran out of money. Mr. Fayeghi explained that he had to get a business partner. During a meeting with Broadbent and Associates, Mr. Fayeghi's business partner had questioned them regarding the $1 million. Mr. Fayeghi stated they were told that they would not be going over the million-dollar mark and there would a second $1 million available for off-site cleanup. Mr. Fayeghi stated that he was also shown a copy of Resolution 94-018, which he read and understood. Mr. Fayeghi stated that if he had known the stipulations of the resolution at that time, he would have paid the deductible and co-pay to pay for the off-site work. Mr. Fayeghi indicated that now his site is worthless from the contamination and he does not have the money to clean it up and needs the Fund to help him. Mr. Fayeghi asked the Board to consider his statements. Mr. Cerruti commented regarding Mr. Walsh stating that if the Board were to direct staff to prepare a new resolution it could be an incentive for an owner to neglect the off-site cleanup. Mr. Cerruti conveyed that on-site and off-site cleanup is not controlled by the amount of money but by the case officer who approves the plan for cleanup. Mr. Cerruti remarked that it was not fair to suggest that NDEP would bias an on-site cleanup and neglect an off-site cleanup. Mr. Biaggi stated that Mr. Cerruti made a good point, that it is the owner/operator who has an obligation to pay for cleanup without regard to whether it is on-site or off-site and also whether or not there is Petroleum Fund coverage. The impression being made is that corrective action will proceed differently depending upon the applicability of Fund coverage and that is not the case. Mr. Biaggi stated that Mr. Walsh has, during two Board meetings, referred to a memo written quite some time ago with regard to encouraging the timely and expedited cleanup of this property and that has no bearing on the Fund. That memo was written in the interest of public health because a domestic drinking water well for North Las Vegas was threatened and it was a public health concern that spurred the drafting of the memo and in no way represented any recognition or acknowledgement of Fund coverage or having no Fund coverage. Mr. Biaggi reminded the Board as to why the Fund was created and why the $1 million limitations were implemented in the first place. Mr. Biaggi stated that the Fund was created and structured in a way to meet Federal requirements. Mr. Biaggi conveyed that Mr. Walsh's argument states that there is two-million dollars for cleanups – $1 million for on-site and $1 million for off-site. Mr. Biaggi indicated, for example, if there were actual damages and someone became ill as a result of an off-site claim or third party liability claim then that $1 million would not be available in its entirety to help reimburse and cover those costs. Mr. Biaggi also stated that Mr. Walsh attempts to tie in the cost of the cleanup and the cost of damages.

Mr. Biaggi stated that a cleanup can be ongoing on a property and it may not devalue the property significantly or that cleanup may allow the property to retain its value. Mr. Cerruti commented regarding Mr. Fayeghi's statement that his consultant had originally informed him that there would be a fixed deductible for the amount of $10,000. After Mr. Cerruti reviewed the file, Mr. Fayeghi's statement regarding the deductible is correct. Mr. Fayeghi had received a letter telling him that the deductible was $10,000 per leaking tank system. Mr. Cerruti quoted from the letter, "according to the information submitted to our office the contamination was discovered in soil borings conducted at the site in a monitoring well that was installed." Mr. Cerruti indicated that confirmation of the release was reported on August 22, 1994 and it was believed that contamination originated from the piping system. However, the application states that the gasoline tanks at the facility were still in service. Mr. Cerruti quoted, "Reimbursements from the Petroleum Fund may be reduced or denied if it has been determined that appropriate repairs were not made to the tank system after discovering a discharge and before returning it to service". Mr. Cerruti further stated that the Petroleum Fund advised Mr. Fayeghi that he was to pay the $10,000 deductible but he was to submit proof that the tank release occurred from the piping and that he had it repaired so the Petroleum Fund would not be paying for an ongoing release. Mr. Cerruti quoted further from the letter: "NDEP therefore requests that you submit the information regarding the repairs made on your system. This information shall be submitted no later than December 1, 1994". Mr. Cerruti stated that it appears that more time elapsed and in the processing of the application and in waiting for the additional information, the deductible changed to a 10% co-payment. Mr. Walsh stated that in Resolution 94-018, the published version, not the unpublished version, which Mr. Cerruti referred to, it states the property damage includes the impacts of contamination that has migrated underground. Any corrective action measures that are performed off-site may be considered as third party liability. Ms. Susan Gray addressed the published versus the unpublished version of Resolution 94-018 further stating that all it does is require staff to make a recommendation to the Board. The Board has its own discretion to take action depending on the facts of the case. The unpublished and published version should not be relevant to this case. Ms. Bowman stated she was confused since Mr. Walsh stated that there is a $1 million for off-site and $1 million for on-site and Mr. Cerruti says that it is not how the Fund is operated. Ms. Bowman agreed that off-site damages can be third party claims and that the third party has to sue the first party in order for the Fund to pay. Ms. Bowman asked Mr. Cerruti if he agreed with Mr. Walsh's interpretation regarding Mr. Meredith's memo. Mr. Cerruti answered referring to the Magic Wand case. Ms. Bowman wanted to know if there were any other cases like this. Mr. Cerruti referred to the Eizman case and those were the only two cases that had gone off-site prior to Resolution 94-018. Mr. Walsh stated that the Eizman case was handled the same. The only thing different was the allocation of the monies. Ms. Blystone asked Mr. Walsh if he was the attorney for the Magic Wand case. Mr. Walsh replied that he was. Mr. Cerruti stated that the Eizman case was a fixed-deductible case. Ms. Susan Gray stated that this case is getting confusing. Ms. Gray stated that currently the Resolution states that staff will recommend $1 million for cleanup costs for on-site and off-site. Any third party damages including off-site cleanup can be added into the second one million dollars and in order to change that the resolution would have to be amended. Mr. Haycock stated that he would like to find a way to continue to cover the $16,000 and the $70,000 estimated to be spent in the future on this case. Mr. Haycock stated that it seems like the resolution will not have to be re-written at this time if the Board makes a determination based on the facts of this case. Mr. Biaggi asked for a roll-call vote and introduced a motion to uphold staff's position. Mr. Haycock asked if there was a second to the motion. Ms. Blystone seconded the motion. A roll call vote was done and the Board members answered as follows: Ms. Linda Bowman - No, Mr. Allen Biaggi - Yes, Mr. Mike Miller - No, Ms. Karen Winchell - No, Mr. Mike Dyzak - No, Ms. Joanne Blystone - No, Mr. John Haycock - No. The motion did not pass. The Board took a five-minute break to decide what the action of the Board would be. Ms. Blystone stated that staff had done its job per the resolution and staff's efforts are appreciated. Ms. Blystone moved that staff look at the original allocation to determine what third party damages were paid and re-allocate that to the second allotment and that the new resolution for this case be brought forward at the next Board meeting reflecting this allocation. Ms. Bowman stated that Ms. Blystone might not have meant to request a new resolution, but to direct staff to re-allocate and make a recommendation to pay the claim based on that

allocation. Mr. Haycock requested that Ms. Gray, Legal Counsel, re-state the motion. Ms. Gray stated the motion is for staff to look at the original allocation to determine what third party damages were paid and to re-allocate that to the second allotment and bring the changes back before the Board with a recommendation at the next Board meeting. Mr. Biaggi commented on the motion and addressed that the Board made decisions based on the facts of this case and this should not set a precedent for any future cases. The motion was carried unanimously.

Non-Consent Item, Case #99-219 – Lake Tahoe Oil

Mr. Cerruti stated that this case is being recommended for denial because $8,080 was incurred for standby time and is recommended for denial because it was for activities other than for remediation. The invoice shows extra amounts due to standby time for a total of $8,080 for Buckeye Excavation and the extra amounts were alleged to be incurred while waiting for NDEP's review of analytical results. Mr. Cerruti stated that NDEP denies the allegation and submitted that the standby time was due to the holdover of the crew and equipment. The owner was in the process of replacing the tanks and there was an urgency to install new replacement tanks before their existing permit expired. NDEP is recommending denial based on Resolution 96-004, adopted on February 29, 1996. Mr. Cerruti referred the Board to page 4 of Resolution 96-004 where it states, "NDEP will not be recommending reimbursement for costs associated with tank or site repairs or upgrading." Mr. Cerruti stated that NDEP believes that upgrading is what the costs were associated with. On page 7 of Resolution 96-004, it states "NDEP will recommend denial for activities conducted for the site owner's convenience." Mr. Cerruti stated that the owner had the option of not installing the tanks until a later date and then re-applying for a permit but instead they elected to go ahead with the replacement of the tanks and incurred the standby time as a result of that. Mr. Cerruti indicated that there were staff from NDEP who could discuss further the specifics of the Lake Tahoe Oil case and also representatives from Lake Tahoe Oil. Mr. Dan Reaser of Lionel, Sawyer and Collins, spoke to the Board. He stated that Steve Richie, the CEM in this matter, was also there to speak with the Board. Mr. Reaser began by stating that the $8,080 was charged and paid by Lake Tahoe Oil for Buckeye Engineering to remain on-site pending analytical results from NDEP on October 3 through 12 of 2001. The consultant found the contamination when the tank was involved in a voluntary tank pull on October 3, 2001 and it was immediately reported to NDEP. Ms. Jennifer Carr had requested that there not be any lateral, horizontal or vertical chasing of the plume until after the analytical results were completed. The analytical results were completed, expedited and submitted the by following day. Ms. Carr had told them she would review those on a prompt basis. When the analyticals were submitted, Harding ESE contacted Ms. Carr but they were advised that she was out of the office and would not be returning until October 8, 2001. It was then that Harding had attempted to speak with Mr. Scott Smale on October 5th who could not be reached, so they spoke with Mr. Doug Zimmerman, the Bureau Chief, on October 8th. Mr. Zimmerman informed them that they did not have to pursue the plume vertically but could not rule until Ms. Carr returned on whether there should be horizontal chasing of the plume. Accordingly, the excavation was held and Ms. Carr returned on October 12th and responded on that day around two o'clock in the afternoon to inform that horizontal chasing was not necessary. Mr. Reaser stated that they felt that Resolution 96-004 applies since this was not done for the owner's convenience. This part of the expense was invoiced by Buckeye as they were standing by waiting for NDEP to review analyticals. Buckeye was there on-site doing the voluntary tank pull since they were the low cost provider of the service based on the reviews done by the CEM. Mr. Reaser indicated if they de-mobilized and then re-mobilized another excavating company that it would not have been cost effective. They did not want to leave the tanks during the coming winter months. They would have had to stabilize the site. The permit from the TRPA was extended and the project was mostly done by the October 15th deadline. The expenses incurred were to benefit doing the project in the most cost effective way. Mr. Haycock asked if there were any questions. Mr. Haycock stated that he had a question for Ms. Carr. Mr. Haycock asked her about her recollection of the events surrounding this case from the time she received a call from Harding ESE. Ms. Carr replied that on October 3rd she had received a call from Harding ESE regarding the activities going on at the site. They told her they were performing a tank removal and had come across some contaminated soil and they had already excavated about

120 tons. Ms. Carr stated she was surprised they had done that much excavating before contacting NDEP. Ms. Carr confirmed that she did tell them not to do anymore excavating until NDEP was sure what they were dealing with. Ms. Carr stated that it is correct that on Friday, October 5th and on Monday, October the 8th, she was off of work on family sick leave. Ms. Carr stated that there was a spill report taken by Mr. Scott Smale on October 5th. Ms. Carr stated she assigned that spill report to a case officer when she returned on October 9th. Ms. Carr stated that due to meetings and being busy that week she had no time to get back to Harding regarding the analytical results and no contact was made by Harding ESE until October 12th. At no time did Harding ESE say that they needed a decision right away on the analytical results because standby time was being incurred. Mr. Mike Dyzak wanted to know what the costs would have been if the excavating company had to leave and return to the site. Mr. Haycock also wanted to know what would have the business implications been if the tanks did not get replaced. Mr. Reaser replied that leaving the tanks out of service would have been a significant financial hardship for Lake Tahoe Oil. Ms. Carr commented that the case officers that work in the Bureau of Corrective Actions do a lot of work communicating with the Certified Environmental Managers (CEM's) when they are encountering situations out in the field. Ms. Carr stated that consultants do have the expertise to be able to make decisions and there does not have to be so much confirmation of proceedings with staff. NDEP does give information and guidance as much as possible; however, the CEMs should be able to use their judgment to make decisions as well. Mr. Biaggi wanted to know why the consultant felt the need to contact NDEP since it is usually up to the CEM as to what to do with contaminated soil rather than have NDEP make the decisions for them. Mr. Steve Richie answered that the case situation was, that on October 3rd, with discovering the contamination, he wanted to take measures to make sure of the direction to take since it was such a large amount of contamination and in the past this situation has caused differences with NDEP about proceedings. Ms. Blystone commented that she did understand both sides of the argument with this case and therefore moved to split the difference between the two amounts and to pay half of what Lake Tahoe Oil is requesting. Ms. Bowman seconded the motion. Ms. Bowman mentioned that there is a need for NDEP to set up more workshops with CEMs. Ms. Joanne Blystone agreed that more workshops need to be held and NDEP should document some of the issues in order to address them. Mr. Haycock made a last request for the motion. The motion was carried.

VI. EXECUTIVE SUMMARY REPORT

Mr. Cerruti stated for FY 2003, NDEP has received 22 new cases for evaluation for a total of 1,145 cases since the inception of the program. There currently are 298 active remediation sites, 711 closed cases, 84 cases denied coverage, 41 cases expired and 19 cases currently in a pending status awaiting submittal of additional information or initial staff evaluation for coverage. To date, a total of $95.3 million has been reimbursed from the Petroleum Fund. Mr. Cerruti stated that NDEP is going to request the Department of Motor Vehicles to activate the tank fee for the upcoming fiscal year. Ms. Bowman wanted to know if the Fund would run out of money before the end of the fiscal year. Mr. Cerruti replied that would not happen and that currently at the end of the fiscal year there would be about $3.5 million left in the Fund as a balance carried forward for the upcoming fiscal year.

A. Report to the Board: State of Nevada Department of Taxation on Delinquencies

Mr. Cerruti announced that Mr. Dino DiCianno, from the Department of Taxation had an issue to discuss before the Board. Mr. DiCianno began by first explaining the offset program which was established by the Legislature through the Controller's Office. Mr. DiCianno explained that any agency which has monies owed to it could be offset by other monies being transmitted either as a refund or a payout to a particular client. Ms. Bowman wanted to know what statute it was under. Mr. DiCianno answered it was in Statute 353.C. Mr. DiCianno stated that the offset program has been in place for about two years. Mr. DiCianno explained the incident where an operator of a site owed money to the Department of Taxation meanwhile, the Board approved reimbursement monies to that client for remediation. The Department of Taxation had put an offset on that client in order to stop that payment. Subsequently, it was discovered that the client was able to get

those funds by finding a way around the offset program. Mr. DiCianno read a section from LCB File number R117-02 where there is a provision, which is part of NAC 353.C in section 2 paragraph 4 stating, "When a payment has been intercepted for a vendor on-hold, no attempt should be made to pay that vendor using another vendor number unless authorized by the holding agency or the State Controller's Office." Mr. Cerruti explained that every claimant of the Petroleum Fund is registered with the Controller's Office by name, address and tax identification number. In the past, staff at NDEP would get vendor information to the Vendor's desk/Controller's Office and then a vendor number would be assigned. The authorizations for payment the Chairman of the Petroleum Board signs are associated with every claimant who has a vendor number. The system has been changed so that NDEP does not prompt the Controller's Office to change any vendor information. It has now been left up to the vendor to be responsible for keeping current information between them and the Controller's Office. Ms. Bowman asked Mr. DiCianno what the solution would be to this and commented regarding that the problem is that remediations are not going to be performed for sites that need to be cleaned up. Without money given up-front an owner/operator won't be able to front monies in order to get his site cleaned up. Ms. Bowman further stated that the Fund was not put into place to shift monies from one state agency to another and it is there to clean up pollution. Mr. DiCianno stated that he did not wish to argue that matter and did not want to make this into a bigger issue than it is. Mr. DiCianno further stated that the Petroleum Fund is a special fund that is in the State Treasury and as such it is regarded as state money and is subject to the same rules and regulations under any statute or provision. Mr. DiCianno stated that the Department of Taxation does not want to stop remediations, nor does the Controller's Office or the Department of Motor Vehicles. This situation will probably not happen again but what should not happen is additional vendor numbers being issued in order to circumvent the process. Mr. Cerruti asked how the offset program is affected when a CEM requests that a client give them a two-party check by using the CEM's tax ID number. Mr. Biaggi mentioned that he spoke with Ms. Janine Coward who indicated that there was going to be a change in the system at the Controller's Office and that two party checks would no longer be allowed. Mr. DiCianno stated this situation has only happened one other time in the two years since the offset program was implemented. Mr. Haycock inquired as to what reasons would the offset program be put into place on a vendor. Mr. DiCianno replied that the claimant must have legitimate established debt for non-payment of certain taxes, which the business in question did have when the vendor number incident happened. Mr. Haycock stated that he appreciated Mr. DiCianno coming to the meeting to discuss this issue. Mr. Haycock commented that CEMs should look at establishing prudent business decisions in the future but as Mr. DiCianno pointed out this situation does not happen very often.

VII. PUBLIC FORUM

Mr. Peter Krueger of the Petroleum Marketer's Association spoke before the Board first mentioning Mr. DiCianno's discussion regarding the offset program. Mr. Krueger stated that the situation Mr. DiCianno discussed is of a great concern. It is recognized that for the sake of the environment CEMs have done work for clients who were not credit-worthy. Mr. Krueger stated this is something the Board and staff should get a handle on and recommended looking at the bidding process and the way it is set up. No one would be willing to bid on projects where the client was not credit-worthy. There seems to be a trend that in order to get the Board's attention, claimants have to go through legal processes, which is another concern. Mr. Krueger also stated that conflicting staff opinion was another issue. He agreed with what Ms. Bowman stated about CEMs and claimants having to rely on case officer's opinions on projects and what it all really comes down to is reimbursement. As an example, Mr. Krueger mentioned the Berry-Hinckley Industries case where Berry-Hinckley settled for a ten percent reduction. If the agenda had been altered, BHI might have received more coverage. Mr. Krueger stated that in a discussion with Mr. Cerruti it was mentioned that the Fund started as a "Fund of forgiveness." Mr. Krueger stated that the Fund was not set up to forgive anybody. When mistakes are made, UST systems are down or need to be upgraded; the money should be there for that. Mr. Krueger mentioned another concern he had where the Clean Cities Organization of Las Vegas wants to use $1 million of the Fund's money in order to fund alternative fuel projects. Mr. Krueger mentioned in past Board

meetings, policies and resolutions were discussed. Mr. Krueger recalled Mr. Biaggi arguing to have resolutions exempted from the Nevada Administrative Practices Act. Mr. Krueger stated that this Board has adopted resolutions with no public hearing and with little or no public notice. As long as the process of resolutions is to be exempt from the Administrative Practices Act, then Mr. Krueger felt staff should make sure many voices are able to participate in the forming of those resolutions rather than it just being a staff resolution. Mr. Krueger mentioned that he had written a letter to the Board and received an adequate response from Mr. Cerruti. Mr. Krueger stated that he had asked for a compilation of all regulations and policies, etc. He received a copy of the Underground Storage Tank Reimbursement Packet. Mr. Krueger suggested that resolutions be included in that package so that CEMs can refer to it. Mr. Krueger stated the Fund is at a point where there is some external threat and there will be some hard work in order to prevent any legislation that would alter the operation of the Fund. Mr. Krueger discussed his concern about the surplus of money in the Fund and there have been discussions as to what to do with the surplus money. The resolutions and how they are dealt with needs to be looked at by staff. Workshops are one thing, but more and more with the offset program issue and with conflicting information, CEMs should be able to do things without fear of being denied money. Mr. Krueger stated that he has written a letter drafted to the Controller's office, as he was aware of the vendor number incident before Mr. DiCianno spoke earlier in the meeting. The State of Nevada could find itself doing more cleanups in the future.

VIII. CONFIRMATION OF NEXT BOARD MEETING

The Board agreed that the next meeting would be held March 18, 2003. Ms. Bowman stated that she did not see any problem with letting people who have interest in the meetings participate from remote locations, but it is extremely difficult to not have the Board members all together. Mr. Haycock agreed that it was more challenging to run a meeting, as it may be more economic, it is still difficult and to be aware of all that is going on. The Board should all congregate at one location and still give interested parties the option of attending meetings from other locations via videoconference. Ms. Blystone stated that maybe the Las Vegas Board members could attend all Board meetings up north, as it can be costly to get staff down to Las Vegas. Mr. Cerruti stated the next meeting would be held in Reno so that all Board members can attend. Mr. Haycock agreed that the next meeting be held in Reno or Carson City and maybe hold a videoconference so that other interested parties could attend.

IX. ADJOURNMENT

The Chairman adjourned the meeting at 1:02 p.m.